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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,023	06/27/2008	Vidya Narayan Acharya	11336.1022USWO	4735
52835 7590 07/28/2009 HAMRE, SCHUMANN, MUELLER & LARSON, P.C. P.O. BOX 2902 MINNEAPOLIS, MN 55402-0902				
EXAMINER				
MELLER, MICHAEL V				
ART UNIT		PAPER NUMBER		
1655				
MAIL DATE		DELIVERY MODE		
07/28/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/591,023

Applicant(s)

ACHARYA ET AL.

Examiner

Michael V. Meller

Art Unit

1655

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 4, 7, 8 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) 14, 16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 7, 8, 15, 18, 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1-13 and 15, chronic recurrent urinary tract infections, renal disorder due to bacterial infections, antibacterial therapy, that the standardized extract is standardized by bioassay in the reply filed on 12/12/2008 is acknowledged. The traversal is on the ground(s) that the art does not teach a standardized extract of *Tinospora cordifolia*. This is not found persuasive because as is evidenced herein a standardized extract of *Tinospora cordifolia* is known (see De Souza, abstract). Thus, a lack of unity does exist.
2. Thus, claims 5, 6, 9-11, 14, 16, 17 are withdrawn from further consideration as being drawn to non-elected subject matter.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, 4, 7, 8, 15, 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Upadhyay et al. in view of De Souza et al.

Upadhyay teaches that *Tinospora sp.* has been widely used in traditional Indian medicine for treatment of urinary tract infections, see col. 2, lines 25-40.

Upadhyay does not explicitly teach that *Tinospora cordifolia* is used to treat urinary tract infections or that the urinary tract infections are "chronic recurrent", that an antibacterial agent such as amoxicillin is used along with the extract, or that the extracts are standardized by bioassay.

De Souza teaches that an extract of *Tinospora cordifolia* is standardized by bioassay. It is administered to humans, see abstract, example 5, paragraphs 1, 27-28, 31, 38-40, 44-50, 54, 60, the claims. It is also taught that the extract is

administered along with conventional therapy such as penicillins, see paragraph 48 and example 5.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to standardize the extract of *Tinospora cordifolia* of Upadhyay since De Souza makes it clear that *Tinospora cordifolia* is routinely standardized by bioassay. Further, De Souza teaches a bioassay which evaluates the bioactivity by determining the percentage of phagocytosis over a base line, wherein the percentage of phagocytosis is not less than 20 % over a base value, see paragraph 44.

Also Upadhyay teaches that plants of the *Tinospora* species have been widely used in traditional Indian medicine for treatment of urinary tract infections which would include using *Tinospora cordifolia* since *Tinospora cordifolia* was just mentioned a few lines above that as a preferred plant in the genus of *Tinospora*. Clearly one of ordinary skill in the art would have contemplated *Tinospora cordifolia* as one of the species in the *Tinospora* genus to be used for the treatment of urinary tract infections. Further, it clearly would have been within the purview of the ordinary artisan to use the extract for chronic recurrent urinary tract infections since the extract is already noted to be used for urinary tract infections and thus to use the extract for chronic recurrent urinary tract infections is obvious since knowing that the extract is widely used in Indian medicine for urinary tract infections it would also be obvious to use the extract for chronic

recurring infections since these type of infections are chronic many times and do reoccur. To use an antibacterial such as amoxicillin is obvious since it is noted in De Souza to use penicillins as conventional therapy with the extract and to use a well known penicillin such as amoxicillin is well within the purview of the ordinary artisan since amoxicillin is one of the well known penicillins.

Since De souza does teach using antibacterials to treat the infection, then inherently the E. Coli and Klebsiella infections will be treated as well.

Applicant argues that Upadhyay makes reference to *Tinospora* species in general and urinary tract infections are mentioned as one of several diseases in the treatment of which plants of *Tinospora* species had been used. Applicant further argues that there is no teaching that the plant *Tinospora cordifolia* could be used to the treatment of urinary tract infections and that there is no reasonable basis to interpret this to indicate that all *Tinospora* species were considered useful for all of the indicated conditions.

While these arguments are noted they are not persuasive. Upadhyay makes it clear that *Tinospora sp.* has been widely used in traditional Indian medicine for treatment of urinary tract infections, see col. 2, lines 25-40. Also Upadhyay teaches that plants of the *Tinospora* species have been widely used in traditional Indian medicine for treatment of urinary tract infections which would include using *Tinospora cordifolia* since *Tinospora cordifolia* was just mentioned a few lines above that as a preferred plant in the genus of *Tinospora*. Clearly one

of ordinary skill in the art would have contemplated *Tinospora cordifolia* as one of the species in the *Tinospora* genus to be used for the treatment of urinary tract infections. Even though Upadhyay teaches that *Tinospora cordifolia* was used for ex vivo expansion of the number of hematopoietic cells, Upadhyay still makes it clear that *Tinospora* sp. of cells were used for treating urinary tract infections. Since clearly *Tinospora cordifolia* was being contemplated in the reference, then clearly one having ordinary skill in the art would have been motivated to use *Tinospora cordifolia* since this plant was clearly contemplated at the time the invention was made for its usefulness and specifically *Tinospora* species were known for their urinary tract infection treatment ability thus making it obvious and well within the purview of the ordinary artisan in an effort to optimize the desired results to use specifically *Tinospora cordifolia* to treat urinary tract infections since such plants such as *Tinospora* species were known to treat urinary tract infection. Clearly *Tinospora cordifolia* was contemplated and was clearly within the purview of the ordinary artisan to use since it is such a well known plant for many uses.

5. Claims 1, 3, 4, 7, 8, 15, 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Upadhyay et al. in view of De Souza et al. and further in view of Solanki.

Upadhyay teaches that *Tinospora sp.* has been widely used in traditional Indian medicine for treatment of urinary tract infections, see col. 2, lines 25-40.

Upadhyay does not explicitly teach that *Tinospora cordifolia* is used to treat urinary tract infections or that the urinary tract infections are "chronic recurrent", that an antibacterial agent such as amoxicillin is used along with the extract, or that the extracts are standardized by bioassay.

De Souza teaches that an extract of *Tinospora cordifolia* is standardized by bioassay. It is administered to humans, see abstract, example 5, paragraphs 1, 27-28, 31, 38-40, 44-50, 54, 60, the claims. It is also taught that the extract is administered along with conventional therapy such as penicillins, see paragraph 48 and example 5.

Solanki teaches that *Tinospora cordifolia* is used to treat a patient who has renal failure and that using the extract helped the kidneys in filtering excess proteins and calcium, see paragraphs 3, 24-25, the claims and abstract, table 1.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to standardize the extract of *Tinospora cordifolia* of Upadhyay since De Souza makes it clear that *Tinospora cordifolia* is routinely standardized by bioassay. Further, De Souza teaches a bioassay which evaluates the bioactivity by determining the percentage of phagocytosis over a base line, wherein the percentage of phagocytosis is not less than 20 % over a base value, see paragraph 44.

Also Upadhyay teaches that plants of the *Tinospora* species have been widely used in traditional Indian medicine for treatment of urinary tract infections which would include using *Tinospora cordifolia* since *Tinospora cordifolia* was just mentioned a few lines above that as a preferred plant in the genus of *Tinospora*. Clearly one of ordinary skill in the art would have contemplated *Tinospora cordifolia* as one of the species in the *Tinospora* genus to be used for the treatment of urinary tract infections. Further, it clearly would have been within the purview of the ordinary artisan to use the extract for chronic recurrent urinary tract infections since the extract is already noted to be used for urinary tract infections and thus to use the extract for chronic recurrent urinary tract infections is obvious since knowing that the extract is widely used in Indian medicine for urinary tract infections it would also be obvious to use the extract for chronic recurring infections since these type of infections are chronic many times and do reoccur. To use an antibacterial such as amoxicillin is obvious since it is noted in De Souza to use penicillins as conventional therapy with the extract and to use a

well known penicillin such as amoxicillin is well within the purview of the ordinary artisan since amoxicillin is one of the well known penicillins.

Since Solanki teaches that *Tinospora cordifolia* is used to treat a patient who has renal failure and that using the extract helped the kidneys in filtering excess proteins and calcium this only further supports the argument that the claimed extract, *Tinospora cordifolia* does in fact treat urinary tract infections successfully since as noted by Solanki the kidneys were aided in filtering excess proteins and calcium which definitely helps in treating renal disorders such as chronic recurrent urinary tract infections.

Since De souza does teach using antibacterials to treat the infection, then inherently the *E. Coli* and *Klebsiella* infections will be treated as well.

Applicant argues that Upadhyay makes reference to *Tinospora* species in general and urinary tract infections are mentioned as one of several diseases in the treatment of which plants of *Tinospora* species had been used. Applicant further argues that there is no teaching that the plant *Tinospora cordifolia* could be used to the treatment of urinary tract infections and that there is no reasonable basis to interpret this to indicate that all *Tinospora* species were considered useful for all of the indicated conditions.

While these arguments are noted they are not persuasive. Upadhyay makes it clear that *Tinospora* sp. has been widely used in traditional Indian medicine for treatment of urinary tract infections, see col. 2, lines 25-40. Also

Upadhyay teaches that plants of the *Tinospora* species have been widely used in traditional Indian medicine for treatment of urinary tract infections which would include using *Tinospora cordifolia* since *Tinospora cordifolia* was just mentioned a few lines above that as a preferred plant in the genus of *Tinospora*. Clearly one of ordinary skill in the art would have contemplated *Tinospora cordifolia* as one of the species in the *Tinospora* genus to be used for the treatment of urinary tract infections. Even though Upadhyay teaches that *Tinospora cordifolia* was used for ex vivo expansion of the number of hematopoietic cells, Upadhyay still makes it clear that *Tinospora* sp. of cells were used for treating urinary tract infections. Since clearly *Tinospora cordifolia* was being contemplated in the reference, then clearly one having ordinary skill in the art would have been motivated to use *Tinospora cordifolia* since this plant was clearly contemplated at the time the invention was made for its usefulness and specifically *Tinospora* species were known for their urinary tract infection treatment ability thus making it obvious and well within the purview of the ordinary artisan in an effort to optimize the desired results to use specifically *Tinospora cordifolia* to treat urinary tract infections since such plants such as *Tinospora* species were known to treat urinary tract infection. Clearly *Tinospora cordifolia* was contemplated and was clearly within the purview of the ordinary artisan to use since it is such a well known plant for many uses.

Applicant argues that Solanki teaches that a mixture of herbs must be used and that that mixture is what yields synergist results, but clearly one could

have used the mixture since applicants claims are not limited to using only *Tinospora cordifolia*.

Next applicant argues that Solanki teaches using the *Tinospora cordifolia* for use in a patient having multiple myeloma and it was not intended to treat renal failure in the patient but this is not well taken for the reasons above and since even Solanki makes it clear that the extract helps the kidneys in filtering excess proteins and calcium, see paragraph 25. Clearly applicant wanted to treat renal failure.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 571-272-0967. The examiner can normally be reached on Monday thru Thursday: 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/591,023
Art Unit: 1655

Page 13

/Michael V. Meller/
Primary Examiner, Art Unit 1655